IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14083 of 2006
Date of Decision: 15.11.2006

Anil Jain (Tinu) ...Petitioner

Vs.

State of Haryana & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.R.K.Jain, Advocate,
for the petitioner.
Mr.Arun Jain, Advocate,
for respondent No.4.

Vinod K.Sharma, J.

Present writ petition has been filed under Articles 226 and 227 of the Constitution of India seeking a writ of certioari for quashing the order/proceedings dated 29.8.2006 whereby respondent No.4 belonging to the Backward Class was declared to have been elected from general category as President of Municipal Council, Hisar.

The facts in brief are that general election of the Municipal Council Hisar was held on 16.4.2005 for 31 Wards in which 15 Wards were reserved for general category, 5 Wards were reserved for Schedule Castes and 2 Wards were reserved for Backward class category and 9 Wards for women category. After the election, the Election Commission, Haryana in pursuance to the Section 24 (2) of the Haryana Municipal Act (for short the Act) notified the names of persons who were declared elected as the

members of the Municipal Council, Hisar by notification dated 19.4.2005 in which the names of the members with their parentage and the Ward of the category from which they were returned was mentioned. The said notification has been attached as Annexure P.1 with the present writ petition which shows that the petitioner was elected as Municipal Council from Ward No.2 from general category whereas respondent No.4 was elected from Ward No.18 which was reserved for Backward Class category. After the declaration of the election in order to fill up the vacant post, the elections were held for the office of President, Municipal Council, Hisar on 29.8.2006 at 11 A.M. in the office of Municipal Council, Hisar under the chairmanship of City Magistrate-cum-Prescribed Authority, Hisar which was duly authorised in this regard by the Deputy Commissioner, Hisar vide his letter dated 25.8.2006. The election to the post of President was held in terms of Section 18 of the Act, which reads as under:

> **"Section 18. Election of President and Vice President.**
>
> (1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its members to be President for such period as may be prescribed, and the member so elected shall become President of Municipal Committee or Municipal Council:
>
> Provided that the office of the President in Municipal Committee and Municipal Council shall be reserved for Scheduled Casts and women in accordance with the provisions made in Section 10:-
>
> Provided further that if the office of President is vacated during his tenure on account of death, resignation or no

confidence motion, a fresh election for the remainder of the period shall be held from the same category.

(2) Every Municipal Committee or Municipal council shall also, from time to time, elect one of its elected members to be Vice-President:-

Provided that if the office of the Vice President is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder of the period shall be held.

(3) The term of the office of President shall be for a period of five years or for the residue period of his office as a member, which ever is less."

In the election held on 29.8.2006 32 Municipal Councilors participated in the election. Respondent No.4 obtained 19 votes whereas the petitioner obtained 13 votes and accordingly respondent No.4 i.e. Bihari Lal Rada was declared as elected. The petitioner has challenged the said election primarily on the ground that as per notification Annexure P.2 the post of President for Municipal Council, Hisar was reserved for general category and therefore, election of respondent No.4 who belongs to Backward category could not be sustained. In support of this contention, learned counsel for the petitioner made reference to Section 10 (5) and Rule 70 (4) of the Act and Rules which read as under:

"10 (5) The office of Presidents in the Municipalities shall be filled up from amongst the members belonging to the

general category, Scheduled casts, Backward Classes and women by rotation and by lots in the manner prescribed."

70 (4)- The offices of the Presidents in the Municipalities shall be filled up from amongst the members belonging to the general category, Scheduled castes, Backward Classes and women by rotation which will be determined in the manner as detailed below:-

Provided that the number of office of the president reserved for the Schedules Castes and Backward Classes in the State shall bear as may by the same proportion to the total number of such offices of the municipalities as the population of the Scheduled Castes and Backward Classes in the state bears to the total population of the State:

Provided further that no less than one third of the total number of offices of the president in the municipalities shall be reserved for women including the officers reserves for Scheduled Castes and Backward Classes women. The reservation of offices for women shall rotate to different municipalities which will be determined by draw of lots, by a committee consisting of the Director, Local Bodies and Deputy Commissioners of the districts concerned or their nominee. If women of the reserved category are not available, then the office of the president shall be filled up from the male member of the said reserved category:

Provided further that the number of offices of

> the president for Scheduled Castes and backward Classes shall be determined on basis of their population and shall rotate to different municipalities firstly, having largest population of Scheduled Castes, secondly, from the remaining municipalities having largest population of backward classes and they rotate in the subsequent terms of offices of the municipalities having next largest population and so on. In case percentage of population of two Municipal Committees or Municipal Councils as regard backward classes and Scheduled castes is the same,the reservation will be determined by draw of lots to be conducted by a committee consisting of Director, Local Bodies and Deputy Commissioner of district concerned or his nominee:
>
> Provided further that incase of the Municipal Council reserved for the backward Classes, the President shall be elected from amongst the members belonging to the backward Classes and incase of Municipal Committee, the member of Backward Class shall be deemed to be elected as president of the municipality reserved for the backward Classes."

The contention of the learned counsel for the petitioner is that according to Section 10 (5), the post of the President has to be filled by election by rotation and by the lots i.e. general category, Scheduled Caste, Backward Class and women categories. The contention of the learned counsel for the petitioner, therefore, was that as general category candidate

cannot contest the election to the post reserved for Scheduled Caste, Backward Class or woman category. Similarly when the post is reserved for for general category it is not open for the persons elected against reserved category to contest election for the post of President reserved for General Category. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of this court in the case of **Smt.Shanti Devi Vs. The State of Haryana and ors. (1996-2) P.L.R. 625**, wherein it has been held as under:-

> "9. On a combined reading of Article 243-T,Sections 10 (5) and 18 of the Act and Rule 70(4) of the Rules, it becomes clear that the Parliament as well as the State Legislature have enacted these provisions in order to provide for reservation of offices of the Presidents for the members of Scheduled Castes, Schedules Tribes, Backward Classes,and women. A bare reading of Section 10 (5) and rule 70 (4) shows that the offices of the Presidents are to be filled from amongst members belonging to different categories by rotation and by lots. There is nothing in the language of these provisions giving an indication that the reservation made in favour of Scheduled Castes etc. is to be confined to the candidates of particular categories who got elected from the reserved constituencies/wards. The use of expression"members belonging to....." is clearly indicative of legislative intendment that only candidate who belongs to Scheduled Caste can contest election to the office of the president against the seat reserved for Scheduled caste.

Similarly, candidates belonging to Backward classes only can contest election for the office of President reserved fo4 Backward Classes. Likewise only women candidate can contest election for the office of the President reserved for woman and if the office is reserved for Scheduled Caste woman then women belong to Scheduled Castes can contest the election.

10. The word 'belonging' has not been defined in the Act or the Rules. In Blacks' Law Dictionary,

Revised Fourth Edition, the word 'belonging' has been ascribed the following meanings"

"that which is connected with the property or greater thing; and appendage; and appurtenance."

11. According to the Chambers English Dictionary, one of the meanings of the word 'belong' is "in anyway connected with" and the word 'belonging' means "matters connected with any person". From these dictionary meaning and also on a plain reading of the statue,it becomes clear that byusing the word 'belonging' after the word 'member' the Legislature has made its intentio clear that the candidate belonging to particular group will be entitled to contest election against the office reserved for Scheduled Caste etc. If the Legislature wanted to confine the reserved seat to those members who are elected from the reserved seats,then the language of the statute would have been differently worded. In that event the words 'who have been elected from the

> reserved seats' would have been used between the words 'woman' and 'by'. If we were to interpret Section 10 (5) and Rule 70 (4) in the manner the respondents want this Court to do, we will enter into an arena where the courts do not normally tread. Amendment, addition or subtraction from the statue is the function of the Legislature and not of the Courts and except in a case where result of a plaint interpretation of the statute leads to extremely absurd situation or causes grave public mischief, the Curt cannot rewrite the statute or make some addition or election from a statutory provision. It is also one of the well settled principles of interpretation that if the words of the statute are precise and unambiguous ten the Court must expound those words in their natural and ordinary sense because the words themselves declare the intent of the law giver."

Learned counsel for the petitioner pointed out that this judgment of Hon'ble Division Bench was over ruled by the Hon'ble Supreme Court in the case of **Saraswati Devi Vs. Shanti Devi (Smt.) and others (1997-2) P.L.R. 421.** However, this judgment of Hon'ble Supreme Court subsequently overruled by the Hon'ble Supreme Court in the case of **Kasambhai F. Ghanchi Vs. Chandubhai D.Rajput and others (1998-2) P.L.R. 611**. Para No.13 of the said judgment which is relevant for decision of this court is reproduced below:-

> "13. The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality

> but it is also an effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. If because of their popularity a larger number of Scheduled Castes, Scheduled Tribes, Backward Classes or women get elected to the municipality than the number of reserved seats that would be welcome. When the idea is to promote the weaker sections of the society,and to improve their lot,it would be a contradiction in terms if members belonging to that section are debarred from standing to the office of the President because such a candidate is popular enough to get elected from a general constituency. It is a fundamental principle of democratic election that a person who is more popular is elected,popularity being measured by the number of votes which the person gets. The language of various legal provisions do not in anyway suggest,expressly or by necessary implication, that even though a person who belongs to a reserved category and is popular enough to get elected from a general constituency should be barred from contesting the election of the President when that office is to be filled only by a reserved category person."

Faced with this situation, learned counsel for the petitioner made reference to the judgment of Hon'ble Supreme Court in the case of State of Orissa **State of Orissa Vs. Sudhansu Sekhar Misra and others AIR 1968 SC** 647 to contend that a decision is only an authority for what it actually decides. Essence of decision is its ratio and not every

observation found therein nor what logically follows from the various observations made in it. According to the learned counsel for the petitioner the finding recorded in para No.13 could not be recorded as a precedent to hold that reserved category candidate could be given right to contest against the post reserved for general category.

Learned counsel for the petitioner thereafter placed reliance on the judgment of Hon'ble Supreme Court in the case of **Vemareddy Kumaraswamy Reddy & Anr. Vs. State of A.P. JT 2006 (2) SC 361** to contend that where the words of statute are unambiguous and clear and the intention of the legislature is clearly conveyed there is no scope for the court to innovate or take upon itself the task of amending or altering statutory provisions. The contention of the learned counsel for the petitioner therefore was that once Section 10 (5) of the Act lays down the rotation for filling the post of President it is not open to read into general category any other category for the purposes of election.

Mr. Arun Jain, learned counsel appearing for respondent No.4 controverted the arguments raised by the learned counsel for the petitioner by making reference to para No.13 of the judgment in **Kasambhai F. Ghanchi's case (supra)** to contend that the contention raised by the learned counsel for the petitioner stands settled by Hon'ble Supreme Court. The contention of the learned counsel for the respondent was that it is not a mere observation but a clear finding recorded while interpreting the provisions of the Act and Rules. The learned counsel for the respondent thereafter placed reliance on the judgment of Hon'ble Supreme Court in the case of **V.V.Giri Vs. D. Suri Dora and others AIR 1959 SC 1318,** wherein it has been held as under

> " A member of the schedule tribe is entitled to contest for the reserved seat and for that purpose he can and must make the prescribed declaration; but it does not follow that because he claims the benefit of the reserved seat and conforms to the statutory requirement in that behalf, he is precluded from contesting the election, if necessary, for the general seat. The claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim and both the claims have to be decided on the basis that there is one election from the double-member constituency."

Learned counsel for the respondent placed reliance on the judgment of Hon'ble Supreme Court in the case of **Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others (2002) 6 SC 127** to contend that the petitioner after having contested the election against respondent No.5 and having taken a chance is estopped to challenge the said election. Learned counsel for the respondent also placed reliance on the judgment of Hon'ble Supreme Court in **Union of India and another Vs. Satya Prakash and others (2006) 4 Supreme Court Cases 550,** wherein it has been held as under:

> " If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class,who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category but while computing the quota/percentage of reservation he/she will be

> deemed to have been allotted a seat as an open category candidate (i.e. on merit) and not as reserved category candidate recommended by the Commission by resorting to the relaxed standard. Simply because he opted a preference from the reserved category would not exhaust the quota of OBC category candidate selected under the relaxed standard. This is the mandate of the proviso to sub-rule (2) of Rule 16."

I have considered the arguments raised by the learned counsel for the parties and find no force in the contention raised by the learned counsel for the petitioner. The word 'general' relates to a whole class, which cannot be restricted or specialised and therefore, it will include even the members belonging to reserved category. Otherwise also, the Hon'ble Supreme Court while interpreting the provisions regarding election to the Municipal Council has been pleased to lay down that a person who belongs to reserved category and is popular enough to get elected from general standard could not be barred from contesting the election of the President when the office is required to be filled only from the General Category.

Therefore, it has to be held that when the post is to be filled by the general category candidate in terms of Section 10 (5) there is no bar for the candidate belonging to the reserved category to contest the election if they are popular enough to contest the same as has been done in the present case.

Thus, there is no merit in the present writ petition, which is accordingly dismissed.

(Vinod K.Sharma)
Judge

15.11.2006
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